

Jones (OH)	Millender-McDonald	Saxton	Boswell	Gephardt	Majette	Ryan (OH)	Smith (NJ)	Turner (TX)
Kanjorski	McDonald	Schakowsky	Boucher	Gerlach	Maloney	Ryan (WI)	Smith (TX)	Udall (CO)
Kaptur	Miller (NC)	Schiff	Boyd	Gibbons	Manzullo	Ryun (KS)	Smith (WA)	Udall (NM)
Kennedy (RI)	Miller, George	Scott (GA)	Bradley (NH)	Gilchrest	Markey	Sabo	Snyder	Upton
Kildee	Mollohan	Scott (VA)	Brady (PA)	Gillmor	Marshall	Sanchez, Linda	Solis	Van Hollen
Kilpatrick	Moore	Sensenbrenner	Brady (TX)	Gingrey	Matheson	T.	Souder	Velázquez
Kind	Moran (VA)	Serrano	Brown (OH)	Gonzalez	Matsui	Sanchez, Loretta	Spratt	Vislosky
King (NY)	Murtha	Sherman	Brown (SC)	Goode	McCarthy (MO)	Sanders	Stark	Vitter
Klecza	Nadler	Skelton	Brown, Corrine	Goodlatte	McCarthy (NY)	Sandlin	Stearns	Walden (OR)
Kucinich	Napolitano	Slaughter	Brown-Waite,	Gordon	McCollum	Saxton	Stenholm	Walsh
Lampson	Neal (MA)	Smith (NJ)	Ginny	Goss	McCotter	Schakowsky	Strickland	Wamp
Langevin	Oberstar	Smith (WA)	Burgess	Granger	McCrery	Schiff	Stupak	Waters
Lantos	Obey	Snyder	Burns	Graves	McDermott	Schrock	Sullivan	Watson
Larsen (WA)	Oliver	Solis	Burr	Green (TX)	McGovern	Scott (GA)	Sweeney	Watt
Larson (CT)	Ortiz	Spratt	Burton (IN)	Green (WI)	McHugh	Scott (VA)	Tancredo	Waxman
Lee	Owens	Stark	Buyer	Greenwood	McInnis	Sensenbrenner	Tanner	Weiner
Levin	Pallone	Strickland	Calvert	Grijalva	McIntyre	Serrano	Tauscher	Weldon (FL)
Lewis (GA)	Pascrell	Stupak	Camp	Gutierrez	McKeon	Sessions	Taylor (MS)	Weldon (PA)
Lipinski	Pastor	Sweeney	Cannon	Gutknecht	McNulty	Shadegg	Taylor (NC)	Weller
LoBiondo	Payne	Tanner	Cantor	Hall	Meehan	Shaw	Terry	Wexler
Lofgren	Pelosi	Tauscher	Capito	Harman	Meek (FL)	Shays	Thomas	Whitfield
Lowey	Peterson (MN)	Thompson (CA)	Capps	Harris	Meeks (NY)	Sherman	Thompson (CA)	Wicker
Lynch	Pomeroy	Thompson (MS)	Capuano	Hart	Menendez	Sherwood	Thompson (MS)	Wilson (NM)
Majette	Price (NC)	Tierney	Cardin	Hastings (FL)	Mica	Shimkus	Thornberry	Wilson (SC)
Maloney	Rahall	Towns	Cardoza	Hastings (WA)	Michaud	Shuster	Tiahrt	Wolf
Markey	Rangel	Turner (TX)	Carson (IN)	Hayes	Millender-McDonald	Simmons	Tiberi	Woolsey
Matsui	Reyes	Udall (CO)	Carson (OK)	Hayworth	Miller (FL)	Simpson	Tierney	Wu
McCarthy (MO)	Rodriguez	Udall (NM)	Carter	Hefley	Miller (MI)	Skelton	Toomey	Wynn
McCarthy (NY)	Ross	Van Hollen	Case	Herger	Miller (NC)	Slaughter	Towns	Young (AK)
McCollum	Rothman	Velázquez	Castle	Hill	Miller, Gary	Smith (MI)	Turner (OH)	Young (FL)
McDermott	Roybal-Allard	Vislosky	Chabot	Hinchey	Miller, George			
McGovern	Ruppersberger	Waters	Chandler	Hinojosa	Mollohan			
McHugh	Rush	Watson	Chocola	Hobson	Moore			
McIntyre	Ryan (OH)	Watt	Clay	Hoeffel	Moran (KS)			
McNulty	Sabo	Waxman	Clyburn	Hoekstra	Moran (VA)			
Meehan	Sanchez, Linda	Weiner	Coble	Holden				
Meek (FL)	T.	Wexler	Cole	Holt				
Meeks (NY)	Sanchez, Loretta	Woolsey	Collins	Honda				
Menendez	Sanders	Wu	Conyers	Hooley (OR)				
Michaud	Sandlin	Wynn	Cooper	Hostettler				
			Costello	Houghton				
			Cox	Hoyer				
			Cramer	Hulshof				
			Crane	Hunter				
			Crenshaw	Hyde				
			Crowley	Inslee				
			Cubin	Isakson				
			Culberson	Israel				
			Cummings	Issa				
			Cunningham	Istook				
			Davis (AL)	Jackson (IL)				
			Davis (CA)	Jackson-Lee				
			Davis (FL)	(TX)				
			Davis (IL)	Jefferson				
			Davis (TN)	Jenkins				
			Davis, Jo Ann	John				
			Davis, Tom	Johnson (CT)				
			Deal (GA)	Johnson (IL)				
			DeFazio	Johnson, E. B.				
			DeGette	Johnson, Sam				
			Delahunt	Jones (NC)				
			DeLauro	Jones (OH)				
			DeLay	Kanjorski				
			Diaz-Balart, L.	Kaptur				
			Diaz-Balart, M.	Keller				
			Dicks	Kelly				
			Dingell	Kennedy (MN)				
			Doggett	Kildee				
			Dooley (CA)	Kilpatrick				
			Doolittle	Kind				
			Doyle	King (IA)				
			Dreier	King (NY)				
			Duncan	Kingston				
			Dunn	Kirk				
			Edwards	Klecza				
			Ehlers	Kline				
			Emanuel	Knollenberg				
			Emerson	Kolbe				
			Engel	Kucinich				
			English	LaHood				
			Eshoo	Lampson				
			Etheridge	Langevin				
			Everett	Lantos				
			Farr	Larsen (WA)				
			Fattah	Larson (CT)				
			Feeney	Latham				
			Ferguson	LaTourette				
			Finler	Lee				
			Flake	Levin				
			Foley	Lewis (CA)				
			Forbes	Lewis (GA)				
			Ford	Lewis (KY)				
			Fossella	Linder				
			Frank (MA)	Lipinski				
			Franks (AZ)	LoBiondo				
			Frelinghuysen	Lofgren				
			Frost	Lowey				
			Gallegly	Lucas (KY)				
			Garrett (NJ)	Lynch				

## NOT VOTING—5

DeMint	Hayes	Tauzin
Deutsch	Leach	

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised 2 minutes remain in this vote.

□ 1558

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

OSCAR SCOTT WOODY POST  
OFFICE BUILDING

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 3740.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania (Mr. MURPHY) that the House suspend the rules and pass the bill, H.R. 3740, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 422, nays 0, not voting 11, as follows:

[Roll No. 186]

YEAS—422

Abercrombie	Ballenger	Bilirakis
Ackerman	Barrett (SC)	Bishop (GA)
Aderholt	Bartlett (MD)	Bishop (NY)
Akin	Barton (TX)	Bishop (UT)
Alexander	Bass	Blackburn
Allen	Beauprez	Blumenauer
Andrews	Becerra	Blunt
Baca	Bell	Boehlert
Bachus	Bereuter	Boehner
Baird	Berkley	Bonilla
Baker	Berman	Bonner
Baldwin	Berry	Bono
Ballance	Biggert	Boozman

## NOT VOTING—11

DeMint	Kennedy (RI)	Peterson (MN)
Deutsch	Leach	Pitts
Evans	Lucas (OK)	Tauzin
Hensarling	Murphy	

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. GILLMOR) (during the vote). Members are advised that there are 2 minutes remaining in this vote.

□ 1607

So (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

OCCUPATIONAL SAFETY AND  
HEALTH SMALL EMPLOYER AC-  
CESS TO JUSTICE ACT OF 2004

Mr. BOEHNER. Mr. Speaker, pursuant to House Resolution 645, I call up the bill (H.R. 2731) to amend the Occupational Safety and Health Act of 1970 to provide for the award of attorney's fees and costs to very small employers when they prevail in litigation prompted by the issuance of citations by the Occupational Safety and Health Administration, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. QUINN). Pursuant to House Resolution 645, the bill is considered read for amendment.

The text of H.R. 2731 is as follows:

H.R. 2731

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SECTION 1. SHORT TITLE.

This Act may be cited as the "Occupational Safety and Health Small Employer Access to Justice Act of 2003".

## SEC. 2. AWARD OF ATTORNEY'S FEES AND COSTS.

The Occupational Safety and Health Act of 1970 (29 U.S.C. 651 and following) is amended by redesignating section 32 through 34 as 33 through 35 and inserting the following new section after section 31:

**"SEC. 32. AWARD OF ATTORNEYS' FEES AND COSTS.**

**"(a) ADMINISTRATIVE PROCEEDINGS.—**An employer who—

**"(1)** is the prevailing party in any adversary adjudication instituted under this Act, and

**"(2)** had not more than 100 employees and a net worth of not more than \$1,500,000 at the time of the adversary adjudication was initiated,

shall be awarded fees and other expenses as a prevailing party under section 504 of title 5, United States Code, in accordance with the provisions of that section, but without regard to whether the position of the Secretary was substantially justified or special circumstances make an award unjust. For purposes of this section the term 'adversary adjudication' has the meaning given that term in section 504(b)(1)(C) of title 5, United States Code.

**"(b) PROCEEDINGS.—**An employer who—

**"(1)** is the prevailing party in any proceeding for judicial review of any action instituted under this Act, and

**"(2)** had not more than 100 employees and a net worth of not more than \$1,500,000 at the time the action addressed under subsection (1) was filed,

shall be awarded fees and other expenses as a prevailing party under section 2412(d) of title 28, United States Code, in accordance with the provisions of that section, but without regard to whether the position of the United States was substantially justified or special circumstances make an award unjust. Any appeal of a determination of fees pursuant to subsection (a) of this subsection shall be determined without regard to whether the position of the United States was substantially justified or special circumstances make an award unjust.

**"(c) APPLICABILITY.—**

**"(1) COMMISSION PROCEEDINGS.—**Subsection (a) of this section applies to proceedings commenced on or after the date of enactment of this Act.

**"(2) COURT PROCEEDINGS.—**Subsection (b) of this section applies to proceedings for judicial review commenced on or after the date of enactment of this Act."

The SPEAKER pro tempore. The amendment printed in the bill, modified by the amendment printed in part C of House Report 108-497, is adopted.

The text of H.R. 2731, as amended, as modified, is as follows:

H.R. 2731

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SEC. 1. SHORT TITLE.**

*This Act may be cited as the "Occupational Safety and Health Small Employer Access to Justice Act of 2004".*

**SEC. 2. AWARD OF ATTORNEYS' FEES AND COSTS.**

*The Occupational Safety and Health Act of 1970 (29 U.S.C. 651 and following) is amended by redesignating sections 32 through 34 as sections 33 through 35 and inserting the following new section after section 31:*

**"SEC. 32. AWARD OF ATTORNEYS' FEES AND COSTS.**

**"(a) ADMINISTRATIVE PROCEEDINGS.—**An employer who—

**"(1)** is the prevailing party in any adversary adjudication instituted under this Act, and

**"(2)** had not more than 100 employees and a net worth of not more than \$7,000,000 at the time of the adversary adjudication was initiated,

shall be awarded fees and other expenses as a prevailing party under section 504 of title 5, United States Code, in accordance with the provisions of that section, but without regard to

*whether the position of the Secretary was substantially justified or special circumstances make an award unjust. For purposes of this section the term 'adversary adjudication' has the meaning given that term in section 504(b)(1)(C) of title 5, United States Code.*

**"(b) PROCEEDINGS.—**An employer who—

**"(1)** is the prevailing party in any proceeding for judicial review of any action instituted under this Act, and

**"(2)** had not more than 100 employees and a net worth of not more than \$7,000,000 at the time the action addressed under subsection (1) was filed,

*shall be awarded fees and other expenses as a prevailing party under section 2412(d) of title 28, United States Code, in accordance with the provisions of that section, but without regard to whether the position of the United States was substantially justified or special circumstances make an award unjust. Any appeal of a determination of fees pursuant to subsection (a) of this subsection shall be determined without regard to whether the position of the United States was substantially justified or special circumstances make an award unjust.*

**"(c) APPLICABILITY.—**

**"(1) COMMISSION PROCEEDINGS.—**Subsection (a) of this section applies to proceedings commenced on or after the date of enactment of this section.

**"(2) COURT PROCEEDINGS.—**Subsection (b) of this section applies to proceedings for judicial review commenced on or after the date of enactment of this section."

The SPEAKER pro tempore. The gentleman from Ohio (Mr. BOEHNER) and the gentleman from New York (Mr. OWENS) each will control 30 minutes.

The Chair recognizes the gentleman from Ohio (Mr. BOEHNER).

**GENERAL LEAVE**

Mr. BOEHNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 2731.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. BOEHNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker the fourth bill we will debate today in this series of votes is another narrowly crafted bill that addresses a specific problem that we found in the OSHA law. In short, we strongly believe that small businesses that face meritless OSHA enforcement actions should not be prevented from defending themselves simply because they cannot afford it.

The Occupational Safety And Health Small Employer Access to Justice Act levels the playing field for small businesses and encourages OSHA to better assess the merits of the case before it brings unnecessary enforcement actions to court against small businesses.

Under current law, the Equal Access to Justice Act allows small business owners to recover attorney's fees if the owner successfully challenges a citation. However, if OSHA can establish that its enforcement action was "substantially justified" or the result of "special circumstances," small businesses can be refused attorney fees even if OSHA loses the case in court.

Historically, the law's "substantially justified" and "special circumstances" standards have made it easy for OSHA to prevent recovery under this broad standard, so attempts by small business owners to recover costs often merely exacerbate the financial harm caused by OSHA's dubious enforcement actions. In fact, let us look at some of the records here.

In 2002, OSHA cited 83,760 violations based on its approximately 40,000 workplace inspections. Yet, how many applications were filed for attorney's fees against OSHA in 2002? That number is eight. How many were granted? One. Moreover, for the last 25 years, only 1 year has seen more than 10 applications filed for attorney's fees against OSHA. When you compare that number to the approximately 80,000 violations cited every year, you begin to wonder.

We have heard testimony in our committee on this issue, and what we have found is that the law's "substantially justified" and "special circumstances" standards have made it easy for OSHA to deny small businesses the ability to recover attorney's fees.

What these numbers tell us is that small businesses can already see the writing on the wall. They know OSHA has the upper hand; and if the prospect of recovering attorney's fees is as bleak as it appears, then why fight the citations at all?

Small employers should not be forced to knuckle under OSHA's citations and settle up front when they believe they are innocent. This measure simply forces OSHA to carefully evaluate the merits of its case against small employers before they bring its case. If OSHA's case is weak and they bring the case anyway, then the agency is going to have to pay the attorney's fees if in fact they lose the case.

Employers face relentless competition every day in the face of high taxes, rising health care costs, and burdensome government regulations. The last thing they need is a meritless OSHA-related litigation that could take years to resolve. As we have said earlier today, over the last 8 months our economy has created 1.1 million net new jobs; 625,000 net new jobs in just the last two months.

We might want to make sure onerous government regulations do not hamstring small businesses' ability to continue to hire new workers and compete in our economy. Frivolous litigation kills jobs, and this measure will help ensure OSHA carefully considers the merits of the case before they bring enforcement action.

The measure before us is a narrowly crafted commonsense bill that addresses a specific problem in OSHA, and it deserves the support of all of our colleagues.

Mr. Speaker, I reserve the balance of my time.

Mr. OWENS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong opposition to H.R. 2731. This bill is the most

alarming of the four before us today. By mandating that OSHA pay the attorney fees of any employer with a total net value of under \$7 million and no more than 100 workers if they prevail upon appeal, H.R. 2731 would drastically undermine the enforcement of OSHA's mission.

As I stressed in my opening statement, more than 90 percent of all private firms in the U.S. would qualify for attorney fees upon successfully prevailing in an appeal. What could be more universal than that? H.R. 2731 would have an incredibly chilling effect on implementation of the act.

What would this bill mean for American workers? It would mean that unscrupulous employers could risk workers' lives with impunity. Focusing on the issue of worker protection, again, I would like to relate some very personal testimony delivered at a forum I held on May 12 on worker deaths, and some of the photos of the people who testified are in front of us.

Patrick J. Walters, whose photo is on the top row, was 22 years old, a plumber's apprentice who was literally buried alive in a trench collapse in June 2002. Patrick had been sent down into a 10-foot deep, rain soaked trench without any training or safety equipment. Moeves Plumbing, a Cincinnati-based employer, had been repeatedly cited already by OSHA over the years for failure to follow basic safety standards for trench work. Although cited and fined for trench safety lapses in 1983, 1984, 1985, Moeves Plumbing took no remedial steps.

Clint Daley, another Moeves employee had been buried in 1989 in circumstances identical to Patrick's. In Daley's case, OSHA agreed to a settlement based on a promise by Moeves to take required safety action, an example of that voluntary compliance business. Two weeks before his death, an OSHA inspector found Patrick and another Moeves employee working in an unstable, unsafe trench that was 15 feet steep. Again, OSHA warnings went unheeded by Moeves and this caused certain, but tragic, results.

After Patrick's death, an attorney for Moeves Plumbing negotiated down the citation from a willful violation to an unclassified. OSHA also reduced the fine down to \$30,000 to be paid over 4 years.

At the May 12 forum, Patrick's mother, Michelle Marts, wondered aloud, "What is it going to take to stop Moeves Plumbing from sending another boy like our son to his death? Patrick did not have to die this way. This absolutely could and should have been prevented. We do not want this to happen to any other family."

□ 1615

Joey Israel was a 22-year-old laborer who fell eight stories to his death from Philadelphia's Victory Building on December 31, 2003. Employed by HydroProof Systems, he had been promoted from entry-level employee to la-

borer only 2 weeks prior to his death. All that is known for certain is that before careening to his death, Joey had been told to pull up a 23½ pound electrical cord hanging from the window. After repeated phone calls to OSHA to ascertain the status report on Joey's case, OSHA responded by stating that HydroProof had not violated any safety rules.

Joey's twin sister, Jaime, insisted upon a personal meeting with the OSHA investigator. She was told that not one of the eight men who were on the job the day her brother was killed had been questioned by OSHA nor had the employer been questioned about the incident. When Jaime questioned how her brother could have been sent alone some 25 feet up in the air on this job, without any prior training or interview, she was told, "That's the beauty of America."

Jaime responded at the May 12 forum with the following quote: "What an awful thing to be told to a mother who just lost her son and a sister who just lost her brother. I believe this is the downfall of America, where, daily, employers risk the lives of untrained men and women who are doing what they have to do to support their families, to make a quick buck and, in a sense, kill for profit. My brother lost his life for a lousy \$60 a day, is that what the lives of our loved ones are worth to their employers?"

Scott Shaw was a 38-year-old husband and father of two young sons who was killed on September 7, 2002. Scott died when he fell into the Schuylkill River, moving from the Hopper Barge to the Work Barge. OSHA investigated and found that Scott's company had committed six serious violations. One of these violations focused on the fact that one barge was 8 feet higher than the other. Also, workers had to climb on rubber tires while jumping from barge to barge. However, OSHA combined these violations into one citation with six items. OSHA's total fine for these violations was only \$4,950.

His wife, Holly, testified that "Scott didn't have a life jacket on. He wasn't required by his company to wear one. There were no life preservers on the barge. Scott's death was needless. The company Scott was working for neglected to follow safety regulations."

"As a teacher and as a parent, I know that it is important that a child understand there are consequences to their actions, and they must accept responsibility for what they have done. Adults must face their responsibility, and must be held accountable for their actions. Please don't let another family suffer as we have. The more that companies are actually punished, the more they realize they must practice workplace safety, and must protect their workers."

I urge my colleagues on both sides of the aisle to understand the seriousness of these discussions today.

This is the final quarter of the marathon four bills today. I hope that the

fact that they have been packaged together has not caused anybody not to listen. I hope that they understand that we are talking about life-and-death matters.

I urge my colleagues to oppose the needless deaths of Americans by opposing H.R. 2731.

Mr. Speaker, I reserve the balance of my time.

Mr. NORWOOD. Mr. Speaker, I yield myself such time as I may consume.

I will remind us that we are on H.R. 2731, the employer access to justice. That is what we are going to be debating and voting on for the next hour.

Mr. Speaker, it is my pleasure to yield 2 minutes to the gentleman from Michigan (Mr. SMITH), my friend.

Mr. SMITH of Michigan. Mr. Speaker, I thank the gentleman very much for the recognition.

I think it is important to recognize, first, that safe working conditions are primarily the result of efforts by employers and employees working together. Safety consciousness probably is the best key to worker safety.

When we add OSHA, and I was one of Michigan's OSHA commissioners for 4½ years, I can guarantee my colleagues that OSHA regulations are some of the most onerous, the most complex legal mandates on business and very difficult to understand. So, in many cases, low wage inspector can go out and, trying to read and enforce the regulation, will cite an employer. If you are a large business, if you are GM or Ford or Chrysler, you have the legal staff to review and understand that kind of allegation and maybe come to terms even before it goes to court.

H.R. 2731 levels the playing field for small businesses and encourages OSHA to have greater fairness, and to provide better access to examine the merits of the case. This legislation simply says that OSHA and, therefore, States that adopt OSHA, such as MIOSHA in Michigan, can arbitrarily make the determination that if a case was "substantially justified" or the "result of special circumstances", then you do not have to reimburse that small company for attorneys' fees.

The fairness that was tried to be reached in the first place from OSHA was saying if it is a frivolous lawsuit, in effect, then OSHA has a responsibility to reimburse the legal attorneys' fees for that business. This is especially important to small business.

I would encourage my colleagues to support 2731. Small business is the key to our economic success in this country, and this simply levels the playing field to make it fair in a challenge by OSHA to that small business and the ability of that small business to react.

Mr. OWENS. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Speaker, I think it is clear that the effect of this bill, if it were to become law, would be to stall enforcement of workplace safety measures. It is a back-handed attempt

to weaken OSHA's enforcement and standards-setting efforts. It would require the American taxpayer to pick up the entire tab if a company successfully challenged even one of the citations that OSHA gave, regardless of whether OSHA's actions were substantially justified.

It is important to note that current law already allows companies to receive payment if the government's position had no substantial justification. Think of it this way: If you had 50 citations and one of the 50 was found wanting, the costs would be shifted over to OSHA, and so we would be punishing the government every time it loses even a small part of an overall enforcement effort. This will deter the agency from enforcing the law.

What is next? Are we going to pay a criminal defendant's legal costs every time there is an acquittal? I know of no other agency that is punished for failing to guarantee the outcome of its good-faith attempts to enforce the law.

OSHA's mission is to protect the safety and health of American workers. We should not tie its hands and drain its resources as H.R. 2731 does.

I recall several years ago there was a ballot measure in California to severely impair the ability of California OSHA to enforce California OSHA regulations. After a very short while, do my colleagues know who the biggest opponent was of that measure to hurt Cal/OSHA? It was the Chamber of Commerce in California because they figured out we will pay more in insurance costs than we will save on compliance costs. It is a mistake for workers and it is a mistake for business to impair OSHA enforcement of safety acts.

I urge colleagues to think carefully about this ill-advised scheme and vote "no" on H.R. 2731.

Mr. NORWOOD. Mr. Speaker, I yield to myself whatever time I may consume.

Mr. Speaker, H.R. 2731 is, once again, a narrow measure with a clearly targeted and very specific goal to ensure very small employers the ability to defend themselves against OSHA's superior litigation position when the small employer believes they are right.

When dealing with OSHA, we now know many small employers are forced to just simply fold their tent, give up because they simply cannot afford the price of justice. As we all know, OSHA has a vastly superior ability to play the litigation game. OSHA has a team of highly skilled, well-seasoned lawyers at its disposal to pressure a small employer and a fully stocked staff to support their efforts.

Maybe even more importantly, they do not have to give any consideration to what the cost of this legal activity may be because they know that the taxpayers of America will pick up all of their costs. That is not even a consideration when they determine to take a small business employer to court, and that is the only determination for a small businessman to defend himself.

A small employer, in contrast, has to open up his own personal checkbook, go out and hire legal help, help that most of the time, the kind of employers we are talking about, they simply cannot afford.

What is more, OSHA litigation is complex, as demonstrated by the thousands of pages of standards, rules and regulations that OSHA has on the books. That means small employers are wise to hire an attorney who specializes in this area of law, adding to the cost that most folks and small business simply cannot afford. They just say, I will pay the fine, I plead guilty, I cannot defend myself.

In sum, it all comes down to the most cost-effective alternative. Can a small employer afford to fight or is it a cheaper business decision to simply knuckle under and pay the fine, despite believing that OSHA is as wrong as they possibly could be?

Obviously, Mr. Speaker, we know that the EAJA just does not work when it comes to the OSHA law. For instance, we know that since the enactment of EAJA, in only 1 year have more than 10 applications for attorneys' fees been filed in an OSHA context. In 2003, OSHA collected over \$782 million in penalties, but in 12 of the last 19 years, OSHA's total EAJA awards have been less than \$10,000.

I think, fairly clearly that demonstrates that it does not work. This does not add up in light of the many complaints Members of Congress hear from our small business constituents every year; and basically it is, I have to plead guilty, I am not guilty, but I cannot afford to go to court; and the cost of going to court is going to be so much more than the fine, I just give in.

In some 180 other statutes, Congress has supplemented the coverage offered by EAJA with other fee-shifting statutory arrangements for attorneys' fees. So we are not suggesting some radical departure from what has been the norm in Congress. What we are offering instead, Mr. Speaker, is a small opportunity to level the playing field for small employers who need all the help they can get, 100 employees or less with a net worth of \$7 million or less.

Mr. Speaker, I said this was a narrow measure, and that is exactly what it is. In fact, it reduces the coverage of what is considered a small business under EAJA. Under H.R. 2731, eligibility for coverage is one-fifth the size of EAJA. This measure could only cover employers with 100 or fewer employees and those with a net worth not exceeding \$7 million. No other employees are even eligible for recovery. So this is truly a measure for small employers who are the most vulnerable to OSHA's litigation squeeze.

Mr. Speaker, no one wants OSHA to use taxpayer money to pay attorneys' fees instead of enforcing the law. That is not our goal. That is not the purpose of this measure, and that is not what would result from its passage.

The purpose of H.R. 2731 is simply to force OSHA to think twice before pur-

suing expensive and time-consuming litigation where they do not have to pay anything, but the taxpayers do, in cases of dubious merit, when it is against very small employers who simply cannot afford to defend themselves.

Under H.R. 2731, if OSHA does bring these actions and loses, it does pay attorneys' fees. There is no increased cost. It comes out of OSHA, and it should come out of OSHA. They should think twice before they take cases to court knowing that all they have to do is say, we are going to court and the small business employer has to give in; that is all.

And as I have said before, if OSHA brings only cases with merit against small employers, this bill is not going to cost them one red cent. All they need to do is better evaluate the merits of their actions and stop using litigation as a way to force employers to say, I give in.

□ 1630

I do not believe you, I think I am right, I give in. I just do not have the money to fight you in court.

I urge my colleagues to vote for passage of H.R. 2731.

Mr. Speaker, I reserve the balance of my time.

Mr. OWENS. Mr. Speaker, I yield 4 minutes to the gentlewoman from California (Ms. WOOLSEY).

Ms. WOOLSEY. Mr. Speaker, first of all I wish to thank the gentleman from New York (Mr. OWENS) for what he has been doing on worker safety issues all these years. If we would just listen to every word he says, we would all learn every day from his wisdom. And I thank him also for the hearings that he held last week. Anybody that sat in those hearings and listened to those families who had lost a family member to a work-site tragedy, it would have strengthened their resolve absolutely that our goal is to strengthen OSHA.

Mr. Speaker, I rise today in opposition to H.R. 2731 because workers deserve to know that their interests will be represented and represented fairly by OSHA. As I said earlier today on another bill, we are not the least bit worried about employers who manage in good faith. We are worried about the ones that ignore near misses and important safety standards, employers who know they have a major problem after the experience of an employee's death or severe injury, but ignore the problem and carry on business as usual until another fatality or another severe injury occurs. Those are the employers we are concerned about.

When workers and their families suffer due to poor safety at the workplace, they feel angry and they feel betrayed. They are not protected and they know it. They do not need to feel betrayed further by their government when they are seeking justice for their original betrayal. This bill threatens the lives of thousands of workers because it forces OSHA to consider costs of attorney's fees before deciding whether or

not to take action. Putting this unique burden on OSHA may take away the only recourse many, many employees have to stand up for their safety or for their families in demanding redress.

Since President Bush took office, it has been clear that he intends to use OSHA to protect business interests rather than workers' health and safety. First, he signed legislation overturning workplace safety rules to prevent ergonomic standards; then he advocated budget cuts for job safety agencies, such as OSHA and NIOSH. He went further by suspending 23 important job safety regulations, and the list goes on and on. This legislation is one more way to weaken OSHA, and it will make it that much easier for business to avoid OSHA regulations.

If my colleagues really wanted to help workers, they would raise the minimum wage, and they would do it now; they would extend unemployment benefits; they would also increase penalties for employers that ignore safety regulations; and ensure that workers and their families have the support they need and deserve to address faulty employer practices.

Mr. Speaker, this administration has lost sight of what workers really need, a safe working environment, a fair wage, and meaningful reforms in the workplace. I urge my colleagues to join me in opposing H.R. 2731, which is an unnecessary attack on worker protections.

Mr. NORWOOD. Mr. Speaker, I yield myself such time as I may consume to point out that probably every Member in here should read the GAO report put out in March 2004. Frankly, President Bush has done an excellent job in workplace health and safety. The numbers have been coming down. As the GAO says, and others, they are at historically low levels. I would say that is probably going in the right direction.

And I say it is going in the right direction because we finally understand the way you get a healthier and safer workplace is having cooperation between the employer and the employee and the OSHA. But when OSHA uses the litigation tactic to force a small employer to admit to something they do not believe they are guilty of, that does not promote cooperation.

This is simply about justice and fairness to small business owners. They are workers too, and they do want to see this legislation passed. In fact, they involve most of the workers in America today and the people that work for them. So I would like for us not to sit here and say that workers do not want to see this legislation passed. That is simply not true. The majority of workers, the 92 percent that are not in the unions today, yes, they do want to see this passed. It is unfair to say they do not. They are working families as much as anybody that is organized.

Mr. Speaker, I reserve the balance of my time.

Mr. OWENS. Mr. Speaker, may I inquire as to how much time is left.

The SPEAKER pro tempore (Mr. QUINN). The gentleman from New York (Mr. OWENS) has 19 minutes remaining, and the gentleman from Georgia (Mr. NORWOOD) has 17 minutes remaining.

Mr. OWENS. Mr. Speaker, I yield 5 minutes to the gentleman from New Jersey (Mr. PAYNE).

(Mr. PAYNE asked and was given permission to revise and extend his remarks.)

Mr. PAYNE. Mr. Speaker, I rise in opposition to H.R. 2731 because I believe that H.R. 2731 is a blatant attempt to chill OSHA's exercise in statutory responsibility to enforce the Occupational Safety and Health Act by penalizing the agency for every instance in which it attempts to do the right thing, but perhaps is unsuccessful. I think that this would certainly dampen people's interest in seeking justice.

Let me just say that as I look at this fourth quarter of these bills that have come here today, this is just another example of weakening OSHA from the inside. My colleagues would probably just like to eliminate it from the outside, but this is the stealth approach.

I think one thing that the other side does well is to give very good names to these bills. For example, this H.R. 2731, Occupational Safety and Health Small Employer Access to Justice of 2004. Now, who could be opposed to the access of justice? However, what does the bill do? It creates a hindrance for people pursuing justice.

Let us just take a look at the other three. H.R. 2728, Occupational Safety and Health Small Business Day in Court Act of 2004. Nothing is better than your day in court. It is the American way. But what does it do? It delays and weakens enforcement. It does not do the right thing.

Then H.R. 2729, once again, sounds great, Occupational Safety and Health Review Commission Efficiency Act of 2004. And what does 2729 do? It makes it more difficult. It enlarges the commission. It creates legal preference. It makes it a little more complicated.

And let us take a look at H.R. 2730, Occupational Safety and Health Independent Review of OSHA Citations Act of 2004. Sounds good. What does it do? It creates conflict with the Secretary. It creates another board that has the right to interpret the Secretary's rulings. We might as well eliminate the Secretary. I'll bet my colleagues would, if they could, because they really want to eliminate OSHA.

And this is not new because this is the way these bills go. Remember the Workers Paycheck Protection Act? Everyone loves to have their paycheck protected, but what did it do? It made it more difficult for people who wanted to pay union dues.

Let us look at the TEAM Act. That is the way we move ahead. Companies that have employees that work in teams together, we move forward, we are more productive, we are going to make the best product. But what does

the bill do? It has the employer select the negotiating team for benefits.

Take a look at the Family Time Flexibility Act. Fantastic. Everyone likes flexibility and likes to be with their family. What does it really do? It replaces overtime with comp time when the employer wants to give it to the employee.

The Truth in Employment Act. We all love truth in employment. What does it do? An employer can fire or refuse to hire people if they think they have union sympathies.

The Fairness for Small Business and Employees Act. Since 85 percent of our businesses are small businesses, we certainly want fairness for small businesses and employees. But what does the act do? It requires the NLRB and OSHA to pay fines. It is sort of the forerunner of H.R. 2731 that we are here for today.

The Sales Incentive Compensation Act. That is why people work hard, because they want to be compensated. They work hard, they are doing it the American way, but what does it do? It takes overtime pay away from inside workers.

Rewarding Performance in Compensation. We all want to be rewarded for our performance. Once again, a beautiful title. What does it do? It merely reduces overtime because it excludes bonuses in the calculation and makes it more difficult.

So as we listen to these great apple pie-named bills, it seems like the nicer they sound, the worse they are. Please do not do a Greatness to Donald Payne bill, because I would hate to hear what it would really do at the end of the day.

So I would just like to say, I urge my colleagues to reject this H.R. 2731, because once again, in my opinion, it is going in the wrong direction.

Mr. NORWOOD. Mr. Speaker, I yield myself such time as I may consume.

I think it is time again to remind the body we are discussing H.R. 2731, the Small Employer Access to Justice Act. What that means is that working families, the majority of the working families in my colleagues' districts that happen to be in small businesses deserve access to justice.

It is clear to everyone that OSHA's attorneys know well when they have a weak case. Nobody has to tell them. They know it. And they know under current law they might as well pursue the case and push the employer into settlement, even if they know they may lose the case in court. So what they are basically saying to that working family who owns a small business is, you either pay this fine and say you are guilty, or we are going to make sure you pay a lot more in defense fees, regardless of who wins in court.

Mr. Speaker, only in these cases and only when an employer is very small does H.R. 2731 suggest that OSHA use some degree of discretion before instituting litigation.

Mr. Speaker, I reserve the balance of my time.

Mr. OWENS. Mr. Speaker, I yield 3 minutes to the gentlewoman from New York (Mrs. MCCARTHY).

Mrs. MCCARTHY of New York. Mr. Speaker, I rise in strong opposition to H.R. 2731.

Mr. Speaker, no one should be fooled by what my colleagues on the other side of the aisle have named this bill. This is not a bill about safety and health or access to justice. This bill is about turning Federal law on its head and restricting an employee's due process and access to justice.

This misguided bill would require OSHA to pay attorney's fees and costs in any case in which it did not prevail, regardless of why the agency did not prevail, and even if OSHA is justified in bringing the action.

Normally, fees and costs are awarded to the prevailing party defending against a frivolous claim. This bill awards fees to employers, even if the claims of their failure to protect their employees has merit. I think this, personally, is disgraceful.

Placing the burden on OSHA to pay attorney's fees for any case they lose would be a great incentive for OSHA to stop bringing claims all together. We see now the reason the other side brought this bill up. Do you see, Mr. Speaker? This means OSHA will be paralyzed to do its job.

American workers will be the ones to suffer, through injuries on the job or even through death. In the year 2000, the last year we had these statistics, 4.7 million injuries happened in this country. We had over 5,500 deaths. And these are added to that.

This bill places a higher priority on the compensation of employees than protecting American workers. In Federal law, we normally award fees and costs to those defending against frivolous lawsuits.

□ 1645

The reason is we want to discourage cases without merit from having a day in court. This bill aims to discourage cases with merit from having their day in court. This is an assault on not just the American worker but the American system of due process and justice as well.

Those on the other side want to eliminate OSHA's enforcement powers by making them pay fees and costs. What is next, Mr. Speaker? Will the other side create a private right of action and ask injured employees to pay fees and costs in valid claims themselves?

Mr. Speaker, will it be, Congratulations, you were right, here is your award for your injury, but you have to pay the employer who injured you for the costs of showing up? I worry about even saying this, out of concern the other side will take me up on it.

This is a bad bill. It ties OSHA's hands and American's workers lose their due process and day in court. This is not limited to small businesses. H.R. 2731, despite its stated intent to

apply to small businesses, achieves broad coverage in employer requirements. The Bureau of Statistics data for the first quarter of 1998 showed that there were over 6.5 million private sector establishments with 99 or fewer employees, employing 55 million workers, 54 percent of the private sector workforce. So even though we are saying we are doing this for small businesses, it is over 54 percent of our workforce.

Mr. Speaker, we can do better. We must do better. We have to make sure that our workers of this country are protected. We care about our small businesses. Everyone cares about small businesses, but going the way we are going now on tying OSHA's hands to prosecute those that are, in my opinion, having unsafe workplaces is not right. We should defeat this bill. I ask for a "no" vote on H.R. 2731.

Mr. NORWOOD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, my opinion is it is shameful that there would be anyone in here who would not want to support working families who happen to be small business owners, which are the majority of people in our districts, so they can have equal access to justice when the big arm of the Federal Government slams down on them.

Mr. Speaker, I reserve the balance of my time.

Mr. OWENS. Mr. Speaker, I yield 4 minutes to the gentleman from New Jersey (Mr. ANDREWS).

(Mr. ANDREWS asked and was given permission to revise and extend his remarks.)

Mr. ANDREWS. Mr. Speaker, I say to the gentleman from Georgia (Mr. NORWOOD) who said that any Member here who does not support the working families who run small businesses should be ashamed of themselves, the gentleman is right. We all should support such individuals, and that is what the law does now.

The law says if someone owns a business and OSHA brings a specious or frivolous claim, that they can recover their attorney's fees now. That is the law. What this bill does is go far beyond the law, and it says to OSHA, if you are not sure you are going to win the case, you better not bring it. If you are not certain you are going to win the case, you are going to have to pay the attorney's fees of the person you are suing.

So if I were the person running OSHA, Mr. Speaker, and my personnel came to me and said there is a claim we want to file against a company that digs trenches that are sometimes unsafe and there was a collapse of a trench last year and a guy died, I would ask them, Are you sure you are going to win the case? And if they are competent and honest attorneys, their answer would be we are not sure because it may be the defense that the trench was constructed properly, or it may be a defense that the worker acted in a fashion that contributed to the accident, or there may be some other defense.

The law today says if OSHA brings a frivolous and unsubstantiated claim and loses, then OSHA must pay the counsel fees of the company that they sue.

Now the majority has said that law is insufficient to get the job done because very few claims have been paid out. I wonder if the reason very few claims have been paid out is because the huge majority of claims that OSHA has brought have been justified, have been heard by a court and have been determined not to be substantially unjustified.

I would respectfully suggest to the majority that if the majority wishes to make the standard easier for a business that is sued to get over, they should look at amending that statute or perhaps look at the definition of "substantially unjustified." What this says is if OSHA sues and loses, it pays. So the only cases that OSHA is going to bring are the ones that they are certain they are going to win. This is effectively and functionally a repeal of the OSHA statute because if the agency brings a claim that it is not sure that it is going to win and if it loses that claim, it has to pay fees that will eventually dwarf and overwhelm its budget, and it will not pursue the claims at all.

The twisted logic of this bill is if OSHA makes a misjudgment and files a case that it loses on a close call, it loses not only the case, but it loses its ability to go after dozens or hundreds of other cases because the resources that it would have devoted to investigating and prosecuting those cases would be otherwise spent.

If OSHA brings a frivolous or unjustified case against a small business, it should pay the counsel fees of the small business. That is the law today. This bill goes far beyond that and says to OSHA you can only bring the cases you are sure you are going to win. That will radically cut back on the ability of this agency to protect the American worker. I fear that is what the bill is intended to do, and that is why we ought to oppose it.

Mr. BOEHNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from New Jersey (Mr. ANDREWS) talks about how employers can recover the cost of their legal fees if in fact they win. But the fact is, and the gentleman knows and we well know, in the last 23 years, 23 years, exactly 37 employers had their attorney's fees returned to them.

I will tell Members why that is the case, and that is because under the Equal Justice Act and the law around OSHA, unless OSHA was completely out of bounds, employers tend to lose. So here is what happens: employers do not even try.

To give another example of why employers are not seeking legal fees from OSHA, it goes to the fact that if I am a small employer, which I was, am I going to put my capital, my assets, on the line, even if I think I am right, to take on the Federal Treasury and the



Federal Government? I am probably just going to suck it up, go to court, pay the fine, and go on because I am not going to put my company at risk. I am not going to put all of my employees at risk, which is exactly what most small employers in America face today. That is why over the last 23 years only 37 employers ever got any attorney's fees from OSHA.

Members can put themselves in the position of that small employer looking up at the Federal Government and the Federal Treasury and mountains of lawyers. I would not take that risk. I do not blame them for not taking the risk.

All we say in this bill is if OSHA brings litigation against a small employer of 100 employees or less with a capital of less than \$7 million, and OSHA loses, the small employer ought to have his attorney's fees covered.

I do not believe that this will reduce the enforcement of OSHA in any way, shape or form; but I do believe it will cause OSHA to consider the strength of that agency, the power of the Federal Government, consider all of that before they come down on some poor small employer who is trying to do his best to protect the health and safety of his employees.

But I do not think it is fair under the current system and the current structure that we have to look up, and to take 2002, for example, one employer, one employer in all of America got his attorney's fees returned to him. One. There were 80,000 citations issued by OSHA, one employer got some attorney's fees returned to him. It is not fair.

Mr. Speaker, I reserve the balance of my time.

Mr. OWENS. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio (Mr. KUCINICH), the distinguish candidate for President.

Mr. KUCINICH. Mr. Speaker, I rise today in strong opposition to H.R. 2731, the misnamed and ill-considered Occupational Safety and Health Small Business Access to Justice Act. In 2002, 5,524 workers were killed on the job because of dramatic injuries. In 2002, almost 60,000 workers died from occupational diseases. And in 2002, over 5 million workers were injured or fell ill on the job.

For some perspective, approximately 56,000 Americans died between 1958 and 1975 in the Vietnam War. The American workplace leads to the same number of deaths in a single year. With this in the background, it is mystifying to me that today we are considering a bill to significantly weaken OSHA and to make the workplace less safe, as H.R. 2731 would do by requiring OSHA to pay attorney's fees in any case in which it does not prevail.

The effect of this bill would be to discourage OSHA from bringing enforcement actions against dangerous workplaces. OSHA would have to calculate the odds of winning against the cost to

its budget if it loses. That would render the Federal cop on the workplace safety beat timid.

Let us be clear, no one would suggest the government should pay the attorney's fees of criminal defendants merely because they have been acquitted. So just as the concept underlying this bill would make our streets more dangerous if applied to the criminal code, something no one in this House would support, it would make our workplaces more dangerous if applied to the OSHA law.

I ask my colleagues, should the level of protection the law provides Americans vanish the moment the workers walk from the street to the shop room floor? That is the concept promoted by this bill. And make no mistake, although current law may not consider deaths resulting from willful disregard of basic safety procedures a criminal matter, such shameful instances are absolutely criminal.

I think it is clear this bill is designed to weaken enforcement of workplace safety laws, to further distance exploited workers from the justice they and their families deserve under the law, and it will severely handicap OSHA by discouraging it to cite employers unless the agency is utterly certain it will win.

Given the importance of OSHA's core mission of protecting workers and workers' lives, and that workers have no private right of action under OSHA, a fact that again mirrors the criminal code that rejects the rationale underlying this bad bill, there is every reason to be more, not less, cautious with fundamentally altering the nature of OSHA enforcement. But H.R. 2731 does not make a cautious change. It will severely endanger the safety of American workers; and as such, it should be defeated.

Mr. NORWOOD. Mr. Speaker, I yield myself such time as I may consume.

As usual, when the gentleman from New Jersey (Mr. ANDREWS) takes the floor, he gives Members pause to think a moment. I have wondered if he is asking the right question, however. When this bill becomes law, it seems to me the question that OSHA should ask is not will we win the case, but are we right. Do we actually have a case where a citizen violated the law, and do we actually have substantial proof to take into court whether that citizen violated the law?

□ 1700

I would hope that when this bill becomes law that OSHA will take cases that they deem meritorious, cases in which they think and believe strongly that they are right. What we are after is having them think carefully about cases that do not have a lot of merit but it is just a good way to win.

Mr. Speaker, I reserve the balance of my time.

Mr. OWENS. Mr. Speaker, I yield myself such time as I may consume.

I want to thank the members of the minority on the committee for their

work on this bill. I want to thank the majority for giving us an opportunity to talk about the very real problems that are faced by workers in the workplace.

Mr. Speaker, I submit for the RECORD an item titled Summary of the AFL-CIO Death on the Job Report, and the second item for the record, Profile of Workplace Safety and Health in the United States.

#### SUMMARY OF THE AFL-CIO DEATH ON THE JOB REPORT

The report is a national and state-by-state profile of worker safety and health in the United States. A combination of too few OSHA inspectors and low penalties makes the threat of an OSHA inspection hollow for too many employers. Millions of workers are still left with no OSHA coverage.

Here are some of the "highlights" of the report:

15 workers were fatally injured and more than 12,800 workers were injured or made ill each day during 2002. These statistics do not include deaths from occupational diseases, which claim the lives of an estimated 50,000 to 60,000 workers each year.

A 62 percent increase in the number of trench fatalities, from 33 in 2002 to 53 in 2003.

Fatal injuries among Hispanic or Latino workers decreased about 6 percent, although the 840 fatalities recorded for Hispanic workers is the second-highest annual total for the population. States that saw an increase in the number of Hispanic worker fatalities in 2002 include Alabama, Arkansas, Florida, Idaho, Indiana, Maine, Maryland, Nebraska, New Jersey, North Carolina, Pennsylvania, Tennessee, Virginia, Washington and Wyoming.

The number of fatal work injuries among foreign-born Hispanic workers increased to 577 in 2002 from 527 in 2001.

Musculoskeletal Disorders continue to account for more than one-third of all injuries and illnesses involving days away from work and remain the biggest category of injury and illness. The occupations that reported the highest number of MSDs involving days away from work in 2002 were nursing aides and orderlies (44,421); truck drivers (36,814); and laborers, nonconstruction (24,862).

As documented in a December 2003 New York Times series, prosecutions of recklessly negligent employers are extremely rare. Of the 170,000 workplace deaths since 1982, only 16 convictions involving jail time have resulted—although 1,242 cases involving work deaths were determined by OSHA to involve "willful" violations by employers (violations in which the employer knew that workers' lives were at risk).

Penalties for significant violations of the law remain low. In fiscal year 2003, serious violations of the OSH Act carried an average penalty of only \$871 (\$856 for federal OSHA, \$885 for state OSHA plans).

2,240 federal and state OSHA inspectors responsible for enforcing the law at 8.1 million workplaces. At its current staffing and inspection levels, it would take federal OSHA 106 years to inspect each workplace under its jurisdiction just once.

Between FY 1999 and FY 2003 the number of employees who work in workplaces inspected by federal OSHA inspections decreased by nearly 12%. The average number of hours spent per inspection also decreased between FY 1999 and FY 2003, from 22 to 18.8 hours per safety inspection and from 40 to 34.7 hours per health inspection. The number of citations for willful violations decreased from 607 in FY 1999 to 391 in FY 2003. The average penalty per violation and per willful violation increased in FY 2003 from the FY 2002

level, while the average penalty per serious violation decreased to its lowest level since 1999.

After three and a half years under the Bush administration, rulemaking at OSHA and MSHA has virtually ground to a halt. In December 2003, the administration published its latest semiannual regulatory agenda, which sets forth its regulatory priorities and plans for the coming year. Having already withdrawn 22 pending OSHA regulatory actions from its regulatory agenda, in its May 2003 regulatory agenda the Bush administration withdrew the glycol ethers standard and the tuberculosis standard, leaving few major initiatives on the regulatory schedule.

OSHA still has taken no action on the Employer Payment for Personal Protective Equipment standard, which has been through the rulemaking process and is ready for final action.

The only major regulations still on the regulatory agenda are for silica, beryllium and hearing conservation for construction workers. But there is no commitment for OSHA to propose these rules. This will be the only administration in history not to issue a major safety and health regulation during its four years in office.

17 MSHA standards to improve safety and health for miners have been withdrawn, including the Air Quality, Chemical Substances and Respiratory standard.

Adjusting for inflation, the FY 2005 proposed OSHA budget represents a \$6.5 million cut over FY 2004 appropriations.

The FY 2005 OSHA budget proposes increasing programs for voluntary compliance with employer assistance while cutting training and outreach programs for workers and freezing standard-setting and enforcement programs. At OSHA, the president proposes to cut worker safety training programs by 65 percent and to shift these funds to employer assistance programs.

Since we have had a running commentary here about staying on the point, I would like to comment directly on H.R. 2731 by quoting from the Brotherhood of Teamsters objections:

"Finally, we oppose H.R. 2731, the Occupational Safety and Health Small Employer Access to Justice Act, which would require that OSHA, the taxpayer, pay the legal costs when it loses a case against a small business that prevails in administrative or judicial proceedings, regardless of whether the government's position was substantially justified. We view this as another effort to impede OSHA's and the Department's efforts to enforce the law and provide an avenue for workers to seek redress.

"We see no justification for such an arbitrary departure from the current practice of each party paying for its own litigation costs for only one class of public prosecutions. We know of no other agency, charged by statute to enforce the law, which is impeded from fulfilling its responsibility with respect to a meritorious complaint because it cannot guarantee the outcome."

If OSHA is forced to guarantee the outcome, it ties OSHA's hands and will rob workers of protections by discouraging OSHA from executing its required responsibilities. Like all of the other items in this marathon package, which I call the More Injuries and More Death Marathon, it stacks the deck against the workers and in favor of the employers.

Mr. Speaker, I yield back the balance of my time.

Mr. NORWOOD. Mr. Speaker, I yield myself such time as I may consume.

I think it is probably important at this time to remind the Members that this debate and this bill is very narrowly tailored. It is H.R. 2731, the Occupational Safety and Health Small Employer Access to Justice Act.

It is just this simple: If you have working families in your district that are running small businesses, we are trying to give them an equal playing field, a level playing field with the Federal Government. If you have a district where there is no small business, then you do not have to worry about this. It will not matter how you vote. But I ask all of my colleagues to level the playing field so little people have a little chance against the Federal Government and OSHA when they come down with all their battery of lawyers.

Mr. BLUMENAUER. Mr. Speaker, unfortunately, this Congress has repeatedly undermined protections for the American workforce, shifting emphasis from employees to employers. The four bills brought to the House floor today are the most recent examples that hinder the efficacy of the Occupational Safety and Health Administration (OSHA), taking away protections from the workers that need them most, and shielding businesses from government oversight.

Taken together these bills:

Allow businesses to indefinitely delay the reparation of health and safety violations.

Needlessly expand the Occupational Safety and Health Review Commission, allowing the administration to stack it with partisans who may work to undermine basic worker protections.

Strip OSHA of the power to issue authoritative interpretation of regulations, enabling more companies to violate safety and health hazards without facing repercussions.

Require OSHA to pay attorney fees and costs even in cases in which the federal government was found to be "substantially justified" in pursuing the action. This will create a deterrent for complaints against employers.

Rather than "reform," these four pieces of legislation weaken OSHA and undermine Congress's original intent when OSHA was enacted in 1970. These bills were introduced under the guise of creating economic competitiveness. Undermining the health and safety standards does not make Americans more competitive. Americans pride themselves in having the greatest workforce in the world. How can we enhance working conditions of workers abroad in trade agreements and other international pacts when we erode basic health and safety protections for our own workforce? Americans deserve a safe and healthy workplace. Limiting OSHA, the agency created to ensure workers receive these basic rights, will do nothing to advance the cause.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in opposition to this bill, H.R. 2731, the "Occupational Safety and Health Review Commission Efficiency Act of 2004."

First, I would like to point out a misconception that has been propagated by our friends on the other side of the aisle. Mistakenly, the Occupational Health and Safety Review Commission under the Act (OSHRC under OSHA)

has been likened to the "plaintiff" in a safety and health citation proceeding.

The reason why our friends on the other side of the aisle have brought this package of four bad proposals to the floor is because they hold true this misconception—that OSHA, in adjudicating the citations that it issues for violations by employers, is a plaintiff. The technical definition of a "plaintiff," for procedural purposes, is the party that initiates a lawsuit, and a "complainant" refers to one who makes the complaint in a legal action or proceeding. However, because OSHA is the agency responsible for enforcing regulations that relate to occupational health and safety, for making our workplaces safe, and for making businesses—regardless of the size or net worth—accountable for the conditions in which they place their workers, OSHA is a conduit and the worker is the real Plaintiff, Mr. Speaker. The worker is the party that has relied upon her employer to comply with the law to their detriment and loss. The worker is the party that has lost wages, life, or a limb. The worker is the party without which the employer ceases to do business. Finally, the worker is the party for whom the OSHA regulations were drafted, passed, and promulgated. Therefore, it is our duty as legislators to do everything in our power to protect them without creating a substantial or unreasonable hardship for the employers.

Again, I oppose H.R. 2731, the "Occupational Safety and Health Small Business Day in Court Act of 2004." This bill would amend the Occupational Safety and Health Act of 1970 to provide for the award of attorney's fees and costs to employers who prevail in adversary adjudication arising from a citation issued under OSHA. Under the guise of protecting businesses that have 10 or fewer employees and up to \$7 million in net worth—i.e., smaller businesses, this legislation irrationally slaps OSHA on the hand every time it loses in court. Let us not forget, OSHA is a regulatory and an enforcement agency; it is in the business of adjudicating citations of health and safety violations.

By imposing such a burden on the agency responsible for keeping our worker safe, we will discourage it from bringing the smaller cases to court and from bringing the cases about which it feels comfortable but not certain to court for fear of having to pay the employer who prevails. One of the baneful effects of this legislation will be to chill the issuance of meritorious health and safety citations in close cases no matter how grave the injury or loss was to the employee, substantially weakening OSHA's enforcement functions.

Finally, because businesses with no more than 100 employees comprise 97.7 percent of all private sector businesses, a great deal of these entities have a higher rate of fatal occupational injury than do those that have 100 or more workers. Passage of H.R. 2731 will make numerous workers around the nation vulnerable to unsafe or potentially unsafe health and safety conditions.

The U.S. Chemical Safety and Hazard Investigation Board (CSB), that makes recommendations to OSHA and EPA, cited several tragic accidents that were caused by uncontrolled reactive hazards because it is one of the largest petrochemical industry center. Since 1980, there have been more than 28 serious reactive chemical accidents in Texas. For example, on July 5, 1990, 17 workers



were killed when a 900,000-gallon chemical waste tank exploded at a plant east of Houston. Furthermore, three of the five costliest reactive accidents occurred in Texas or Louisiana with combined property damages in excess of \$210 million.

Dangerous conditions exist that threaten the lives of people who simply want to make a living. The policy that is proposed in H.R. 2731 ignores the need to hold employers to a commitment to achieve and maintain a safe and healthy workplace.

Mr. Speaker, again, I oppose this bill and urge my colleagues to support our workers.

Mr. BACA. Mr. Speaker, I rise in opposition of all four of the OSHA bills under consideration today. Republicans are trying to say that our country's laws are the cause for the offshoring of American jobs. This is not only untrue, but it's shameful to accuse the few protections that exist for our nation's workers as the cause for their jobs being shipped overseas.

While the Republican Chairman of the Ways and Means Committee is busy writing an FSC/ETI tax cut bill that will give tax breaks to companies that move to China or India, his Republican colleagues try to confuse people on the reasons why jobs are leaving main street and being sent to mainland China. The face is that we are losing jobs because of the failed policies of this administration. The compassionate conservatism of this administration has cost us 3 million jobs. Please end the compassion!

President Bush's top economic advisor has even proudly said that sending American jobs overseas is a good thing. Well, I for one will not let them confuse the issue. We cannot let Republicans say that the way to ease the competitive disadvantage to third world countries like China or Brazil is to adopt their labor standards. That type of thinking would take boys and girls out of the classroom and into the coal mine.

These four anti-worker safety bills would substantially weaken worker health and safety laws and hurt our workers. H.R. 2728 weakens enforcement of workplace health and safety regulations by dragging out the date for imposing penalties. It also drags out the date by which corrective action must be taken to mitigate the health or safety hazard.

H.R. 2729 weakens worker protections by expanding the membership of the commission and flooding it with partisan appointees that agree with the President's anti-worker agenda. This commission has had three members since it was established in 1970. There is no reason to expand it or to allow a minority of the commission to make decisions. Both these changes make no sense whatsoever.

H.R. 2730 would undermine the OSHA enforcement functions by encouraging challenges to Labor Department rules and interpretations.

H.R. 2731 would put the health and safety of thousands of workers at risk by encouraging lawbreakers to fight any worker safety violations in court. OSHA settles or wins the vast majority of its enforcement cases; there is no reason to assume employers need to be protected from an overzealous agency. The bill is one-sided. If OSHA wins, the employer does not have to pay OSHA's expenses. The real loser under this legislation is the taxpayer and American workers.

As you can see, all four bills are anti-worker laws. The only way they can justify them is to

trump up charges that it is these worker protection laws that are costing us jobs. This is false and worse yet, it is a lie.

Mr. Speaker, I urge my colleagues to oppose all four of the anti-OSHA bills.

Mr. HOLT. Mr. Speaker, I rise in opposition to H.R. 2731, Occupational Safety and Health Small Employer Access to Justice Act. This bill changes current law to permit the awarding of attorney's fees and expenses to a small employer who prevails in an administrative or judicial proceeding against the Occupational Safety and Health Administration (OSHA), regardless of whether the position of OSHA was "substantially justified."

This bill treats OSHA differently than all other federal agencies. The bill holds OSHA to higher standard with regard to the payment of the opposing party's attorney's fees than any other agency.

Like most Federal agencies, OSHA is subject to the Equal Access to Justice Act (EAJA). Under EAJA, if the government's position is not "substantially justified," the government must pay the prevailing party's fees and costs. According to information provided to then-Chairman Goodling in 1999, from FY 1981 through FY 1998, there were 68 applications for fees under EAJA by employers involving OSHA complaints. 41 of those applications were denied and 27 were granted.

In FY 1999, there were 12 applications filed, of which 2 had been denied, 3 had been granted, and 7 were still pending at the time the information was provided. There is no evidence that OSHA has engaged in reckless prosecutions or that it should be singled out for a higher standard than all other Federal agencies.

The likely consequences of this change is that OSHA would be less likely to issue complaints against those employers, more safety and health violations will go uncorrected, and, consequentially, more workers may be injured or killed.

This bill places employers' convenience over the safety and health of workers. There is no private right of action under the OSH Act—if OSHA fails to enforce the law, workers have no other recourse. In effect, H.R. 2731 places a higher priority on compensating employers for legal fees than on protecting the safety and health of workers.

Mr. Speaker, today we should be talking about how to protect our workers not endanger them. 15 workers were fatally injured and more than 12,800 workers were injured or made ill each day during 2002. These statistics do not include deaths from occupational diseases, which claim the lives of an estimated 50,000 to 60,000 workers each year. This bill will cause the number of worker deaths to go up, not down.

We should be discussing giving OSHA the proper funding to do its job. Between FY 1999 and FY 2003, the number of employees who work in workplaces inspected by federal OSHA inspections decreased by nearly 12%. The average number of hours spent per inspection also decreased between FY 1999 and FY 2003, from 22 to 18.8 hours per safety inspection and from 40 to 34.7 hours per health inspection. Adjusting for inflation, the FY 2005 proposed OSHA budget represents a \$6.5 million cut over FY 2004 appropriations.

The FY 2005 OSHA budget proposed increasing programs for voluntary compliance and employer assistance while cutting training

and outreach programs for workers and freezing standard-setting and enforcement programs. At OSHA, the president proposes to cut worker safety training programs by 65 percent and to shift these funds to employer assistance programs. These are the problems we should be addressing today, rather than debating H.R. 2731. I ask my colleagues to oppose this bill.

Mr. SAM JOHNSON of Texas. Mr. Speaker, I would like to express my support for the legislation introduced today by my colleague from Georgia.

I think that all 4 of Mr. NORWOOD's bills on the floor today will improve workplace safety, level the playing field for small businesses, and ensure that employees and employers are treated fairly.

H.R. 2731 encourages OSHA to really look at the merits of a case before it brings unnecessary enforcement actions to court against small businesses.

Current law does allow small business owners to recover attorney's fees if they successfully challenge a citation.

But in the real world of OSHA, this simply does not work for small businesses. In the last 23 years, small business employers have been able to recover costs from OSHA only 37 times!

Last year alone, only one employer was awarded attorney's fees, despite more than 80,000 citations issued by OSHA.

H.R. 2731 limits its scope to small businesses with 100 employees or less and less than \$7 million in net worth, thereby assuring targeted and meaningful relief to those businesses that are least able to cope with these hefty and ongoing litigation costs. This reform is necessary for the vitality of America's small businesses and the job security of America's workers.

Again, I applaud my colleague from Georgia for introducing this much needed legislation and I look forward to seeing it pass today.

Mr. NORWOOD. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. QUINN). All time for debate has expired.

Pursuant to House Resolution 645, the previous question is ordered on the bill, as amended.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. NORWOOD. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question are postponed.

#### GENERAL LEAVE

Mr. TOM DAVIS of Virginia. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 2432 and to include extraneous material thereon.